

MT LEGISLATIVE HISTORY

Chapter 402 1982

Bill (H) 202 S _____

Original bill & hist. ✓C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) JAN 22 ✓C

Hearing Date(s) MAR 23 ✓C

FEB 3 ✓C

MAR 22 ✓C

_____ C

_____ C

_____ C

_____ C

Date Out FEB 3 ✓C

MAR 26 ✓C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

HOUSE BILL NO. 207

INTRODUCED BY ADDY

IN THE HOUSE

JANUARY 14, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 3, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 4, 1987	PRINTING REPORT.
FEBRUARY 5, 1987	SECOND READING, DO PASS.
FEBRUARY 6, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 97; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 10, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 26, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 HB BILL NO. 207
2 INTRODUCED BY Ally
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT
5 DISPOSITION BY THE DEPARTMENT OF ADMINISTRATION OF TORT
6 CLAIMS AGAINST THE STATE IS A PREREQUISITE TO FILING AN
7 ACTION AGAINST THE STATE IN DISTRICT COURT; AMENDING SECTION
8 2-9-301, MCA; AND PROVIDING AN APPLICABILITY DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 2-9-301, MCA, is amended to read:
12 "2-9-301. Filing of claims against state and political
13 subdivisions -- disposition by state agency as prerequisite.
14 (1) All claims against the state arising under the
15 provisions of parts 1 through 3 of this chapter ~~shall~~ must
16 be presented in writing to ~~and filed with~~ the department of
17 administration.
18 (2) A complaint based on a claim subject to the
19 provisions of subsection (1) may not be filed in district
20 court unless the claimant has first presented the claim to
21 the department of administration and the department has
22 finally denied the claim. The department's denial of a
23 claim must be in writing and must be sent by certified mail.
24 The failure of the department to make final disposition of a
25 claim within 60 days after it is presented to the department

1 must, at the option of the claimant at any time thereafter,
2 be considered a final denial of the claim for purposes of
3 this subsection. The provisions of this subsection do not
4 apply to claims that may be asserted under Title 25, chapter
5 20, by third-party complaint, cross-claim, or counterclaim.
6 ~~(2)~~ (3) All claims against a political subdivision
7 arising under the provisions of parts 1 through 3 shall be
8 presented to and filed with the clerk or secretary of the
9 political subdivision."
10 NEW SECTION. Section 2. Extension of authority. Any
11 existing authority of the department of administration to
12 make rules on the subject of the provisions of this act is
13 extended to the provisions of this act.
14 NEW SECTION. Section 3. Applicability. This act
15 applies to causes of action filed in district court after
16 the effective date of this act.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 207

INTRODUCED BY ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DISPOSITION BY THE DEPARTMENT OF ADMINISTRATION OF TORT CLAIMS AGAINST THE STATE IS A PREREQUISITE TO FILING AN ACTION AGAINST THE STATE IN DISTRICT COURT; AMENDING SECTION 2-9-301, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-301, MCA, is amended to read:

"2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency as prerequisite.

(1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter ~~shall~~ must be presented in writing to ~~and filed with~~ the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The ~~department's denial of a claim must be in writing and must be sent by certified mail. The failure of the department to make final disposition of a claim within 60 days after it is presented to the department~~

~~must, at the option of the claimant at any time thereafter, be considered a final denial of the claim for purposes of this subsection~~ DEPARTMENT MUST GRANT OR DENY THE CLAIM IN WRITING SENT BY CERTIFIED MAIL WITHIN 60 DAYS AFTER THE CLAIM IS PRESENTED TO THE DEPARTMENT. UPON THE DEPARTMENT'S RECEIPT OF THE CLAIM, THE STATUTE OF LIMITATIONS ON THE CLAIM IS TOLLED FOR 60 DAYS OR UNTIL THE DEPARTMENT DENIES THE CLAIM, WHICHEVER IS LESS. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

~~{2}{3}~~ All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Applicability. This act applies to causes of action filed in district court after the effective date of this act.

-End-

HOUSE BILL NO. 207

INTRODUCED BY ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DISPOSITION BY THE DEPARTMENT OF ADMINISTRATION OF TORT CLAIMS AGAINST THE STATE IS A PREREQUISITE TO FILING AN ACTION AGAINST THE STATE IN DISTRICT COURT; AMENDING SECTION 2-9-301, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-301, MCA, is amended to read:

"2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency as prerequisite.

(1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter ~~shall~~ must be presented in writing to ~~and filed with~~ the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department's denial of a claim must be in writing and must be sent by certified mail. The failure of the department to make final disposition of a claim within 60 days after it is presented to the department

~~must, at the option of the claimant at any time thereafter, be considered a final denial of the claim for purposes of this subsection~~ DEPARTMENT MUST GRANT OR DENY THE CLAIM IN WRITING SENT BY CERTIFIED MAIL WITHIN 60 DAYS AFTER THE CLAIM IS PRESENTED TO THE DEPARTMENT. UPON THE DEPARTMENT'S RECEIPT OF THE CLAIM, THE STATUTE OF LIMITATIONS ON THE CLAIM IS TOLLED FOR 60 DAYS OR UNTIL THE DEPARTMENT DENIES THE CLAIM, WHICHEVER IS LESS. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

{2}(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Applicability. This act applies to causes of action filed in district court after the effective date of this act.

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
146	1/12/87	2/6/87	2/21/87			2/21/87					
163	1/13/87	1/20/87	1/22/87	tabled							
165		2/18/87	failed to meet deadline								
167	1/13/87	1/21/87				2/19/87					
188	1/14/87	1/22/87	1/29/87	1/29/87							
192	1/14/87	1/20/87	1/22/87	2/23/87	tabled						
197	1/14/87	1/20/87	1/22/87			1/22/87					
202	1/14/87	1/22/87	1/23/87	tabled							
207	1/14/87	1/22/87	2/3/87			2/3/87					
209	1/14/87	1/21/87	2/19/87	tabled							
212	1/14/87	2/6/87	2/21/87	tabled							
219	1/15/87	2/6/87				2/21/87					
235	1/16/87	1/26/87	2/2/87	2/2/87							
236	1/16/87	1/26/87	2/14/87			2/14/87					

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 22, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 22, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 202: Rep. Jan Brown, sponsor, District No. 46, stated HB 202 deals with a privileged relationship that exists between a licensed social worker and his client. It shall be placed on the same basis as provided by law between an attorney and his client.

PROPOSERS: JOHN MADSEN, Department of Social Rehabilitation Services, explained the department supported the concept of providing privilege to social workers but questioned that the same privilege existed for psychologists. Many psychologists refuse to report child abuse cases and for that reason the department had a problem with the way the bill was written.

JUDITH H. CARLSON, Montana Chapter of the Association of Social Workers, stated it was at the department's request that this bill be sponsored by Rep. Jan Brown. Montana has 150 licensed social workers. One of the basic tenets of social work is the relationship between the social worker and his/her client is confidential. There is often heavy and intensive information which passes between the client and the therapist/social worker. This is necessary for the treatment of the client. However, unless this information is protected, it is unlikely that many clients would share their feelings and thoughts to the degree necessary for treatment to be effective. She urged support for HB #202 and submitted written testimony. (Exhibit A).

REP. TOM BULGER, stated as a physician, anyone who does therapy should have a confidential relationship with the patient.

OPPOSERS: ALEX J. DZIEKONSKI, pointed out that passage of this legislation would be very detrimental to the family, as it would be placing the social worker in a position of parent over another persons child and this could lead to rebellion against parental authority. He submitted written testimony. (Exhibit B).

JOHN MADSEN, Department of Social Rehabilitation and Services, urged a DO PASS for HB 188.

JAMES J. FLANEGAN, Director of Catholic Social Services, supported the legislation as it is.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 188: Rep. Daily asked Ms. Van Genderum why they need the bill. She stated that many children from overseas are placed in Montana and the procedures need to be made clear for the District Court judges and attorneys. The procedures need to be standardized for use throughout the state.

Rep. Bradley closed the hearing on HB 188.

HOUSE BILL NO. 207: Rep. Addy, District No. 94, stated he was carrying this bill at the request of the Department of Administration of Tort Claims Division. Each time the state of Montana is sued in a civil action for negligent design of a vehicle or your run of the mill tort suits, the law requires people to first file a claim with the department. This bill clarifies the procedure of filing a claim. He explained that a complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department's denial of a claim must be in writing and must be sent by certified mail. The failure of the department to make final disposition of a claim within 60 days after it is presented to the department must, at the option of the claimant at any time thereafter, be considered a final denial of the claim for purposes of this subsection.

PROPOSERS: JOHN MAYNARD, Administrator of the Tort Claims Division of the Department of Administration, stated that this bill presents a small but significant policy decision in the area of the tort claims act. The bill is submitted to prevent anymore litigation than is absolutely necessary.

KARL ENGLAND, Montana Trial Lawyers Association, proposed an amendment to the bill regarding the statute of limitations. He suggested that for the 60 days or for a reasonable time thereafter, the bill will not work to decrease the statute of limitations on cases against the state. The department should have an affirmative duty to respond in 60 days.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 207: Rep. Eudaily questioned Rep. Addy in regard to third party claims. He stated that a third party claim is one that is filed after the suit is filed in the first instance. Rep. Giacometto asked Rep. Addy if he had any problems with the proposed amendment and he stated that he did not.

Rep. Mercer questioned Mr. England about the applicability date in regard to the act being set up so that it applies to causes of action that are filed after the effective dates. Mr. England stated that Rep. Mercer was correct. Most changes in tort laws ought to apply to causes of action arising after the applicability date.

Rep. Addy closed the hearing on HB 207.

EXECUTIVE SESSION

ACTION ON HOUSE BILL NO. 73: Rep. Mercer moved his proposed amendments. (See amendments attached). Rep. Miles stated that the amendments clarify the intent of the bill and supports them. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Brown moved DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 73, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO 120: Rep. Hannah moved to TABLE the bill. A voice vote was taken and the motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 78: Rep. Gould moved that HB 78 DO NOT PASS. Rep. Hannah requested that Rep. Gould discuss his motion. He stated that if a person is an injured, disabled worker and is already suffering from a cut in wages, if he could not pay before, he cannot pay now. Rep. Bulger stated that paramount is the obligation that the gentleman incurs by fathering children and nothing should free him of that obligation. Rep. Giacometto supported the bill. Rep. Brown opposed the bill. Question was called and a voice vote was taken. The motion FAILED. Rep. Bulger moved that HB 78, DO PASS. Rep. Addy moved to amend the bill so that only lump sum payments are subject to attachment. Rep. Bulger opposed the amendment. Question was called. Rep. Eudaily moved that a roll call vote be taken. (Roll call vote attached). The motion FAILED 9-9. Discussion continued on the bill and Rep. Giacometto made the motion to RECONSIDER HB 78 as DO PASS. Rep. Mercer made the motion that a roll call vote be taken. (Roll call vote attached). The motion FAILED 8-10. Rep. Giacometto requested that the committee discuss the bill further and that a subcommittee be formed to work on

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date *January 22, 1987*

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 3, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 3, 1987, at 8:00 a.m. in Room 312-D.

ROLL CALL: All members present except for Rep. Daily who was excused.

HOUSE BILL NO. 353: Rep. Gould, District #61, sponsor, stated that this bill adds dentists to doctor-patient privilege. A dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient.

SUPPORTERS: Roger Tippy, attorney, went on record in support of the bill.

Larry E. Riley, Missoula, stated that HB #353 simply inserts the word dentists into it.

NO OPPONENTS:

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 353: Rep. Addy stated that he does not feel doctor-patient privilege should apply to dentists. He asked Mr. Riley if other states have this patient privilege. Mr. Riley stated he did not know but that he had always operated with the understanding that dentists had this privilege with their patients.

Rep. Eudaily asked Mr. Riley who are health care providers. Mr. Riley explained that presently the statute reads just simply doctors and surgeons.

Rep. Gould closed the hearing by stressing the point that a dentist's records should be kept confidential.

HOUSE BILL NO. 268: Rep. Thomas, District #62, sponsor, stated the bill corrects an injustice. He explained the meaning of the word subrogation and submitted an example of how it is used (Exhibit A). The contingency fee would be taken out of only what is not subrogated.

NO PROPONENTS

OPPONENTS: Pat Melby, State Bar Association of Montana, recommends a DO NOT PASS on this bill.

Rose Skoogs, lobbyist for the Montana Defense Council, is opposed to any litigation which would interfere with the right of lawyer-client contracts.

Karl England, Trial Lawyers Association of Montana, stated that this bill does not reflect the current state of our law.

Rep. Thomas closed the hearing by stating he feels something can be done with this bill because it will make sure an injured worker gets what is coming to him.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 207: Rep. Addy moves DO PASS. Rep. Rapp-Svrcek stated that an amendment should be made on Page 1, line 23, striking "department's" through "this subsection" at beginning of line 3 on Page 2 and inserting: "department must grant or deny the claim in writing sent by certified mail within 60 days after the claim is presented to the department. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 60 days or until the department denies the claim, whichever is less". Rep. Addy moves the amendment. Question was called and a voice vote was taken on the amendment. The amendment PASSED unanimously. Question was called and a voice vote was taken. The motion carried unanimously for a DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 353: Rep. Addy moves DO NOT PASS. Question was called and a voice vote was taken. All members voted in favor of the bill with the exception of Rep. Addy and Rep. Hannah who opposed. Motion carried for a DO PASS.

ACTION ON HOUSE BILL NO. 268: Rep. Addy moves DO NOT PASS. Question was called and Rep. Mercer made a substitute motion to table the bill. A voice vote was taken with all members voting in favor with the exception of Rep. Cobb who opposed. HB #268 was TABLED.

ACTION ON HOUSE BILL NO. 309: Rep. Giacometto moves DO PASS as amended. Question was called by Rep. Brown. A voice vote was taken and the motion carried unanimously.

STANDING COMMITTEE REPORT

February 3,

97
19

JUDICIARY

Mr. Speaker: We, the committee on

HOUSE BILL NO. 207

report

XX

☐ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

XX

☐ as amended
☐ statement of intent attached

Chairman

1. Page 1, line 23.

Strike: "department's" through "this subsection" at beginning of line 3 on page 2

Insert: "department must grant or deny the claim in writing sent by certified mail within 60 days after the claim is presented to the department. Upon the department's receipt of the claim, the statute of limitations on the claim is tolled for 60 days or until the department denies the claim, whichever is less"

9/21
FIRST

reading copy (WHITE)
color

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 3, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)			✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

GILBERT, BOB

LIMITING RIGHT TO RECOVER DAMAGES FOR EMOTIONAL OR MENTAL DISTRESS

CONCUR AS AMENDED

COMMITTEE--(S) JUDICIARY

RUN DATE.... 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0170	1/26				LABOR & EMPLOYMENT	—
JONES, TOM			DELETE PROVISION SETTING LIEN PRIORITY OF WITHHOLDING TAXES			
HB0188	2/04	3/13		CONCUR		3/13
BRADLEY, DOROTHY			CLARIFYING PROCEDURE FOR ADOPTION OF CHILDREN			
HB0197	1/30	3/06		CONCUR		3/6
GRADY, ED			OPERATING MOTOR VEHICLE WITHOUT LIABILITY INSURANCE -- INCREASE PENALTIES			
HB0207	2/10	3/23		CONCUR AS AMENDED		3/26
ADDY, KELLY			DISPOSITION OF STATE TORT CLAIMS BY AGENCY PREREQUISITE TO COURT ACTION			
HB0219	3/02	3/24		CONCUR AS AMENDED		3/26
HOLLIDAY, GAY			LIMIT CIVIL LIABILITY OF NONPROFIT ORGANIZATIONS FOR RODEO INJURIES			
HB0223	2/02	3/03		CONCUR		3/3
BARDANOUVE, FRANCIS			ADOPT THE INTERSTATE CORRECTIONS COMPACT			
HB0235	2/10	3/05		CONCUR		3/5
ADDY, KELLY			CLARIFY PENALTY FOR FAILURE TO OBEY SUBPOENA			
HB0236	2/21	3/05		CONCUR AS AMENDED		3/11
ADDY, KELLY			REQUIRE JUD. NOMINATION COMM. TO MEET BEFORE VACANCY OCCURS IN SOME CASES			
HB0241	2/19	3/10		CONCUR AS AMENDED		3/24
SPAETH, GARY			REGULATE WRONGFUL DISCHARGE DISPUTES			
HB0256	2/19	3/11		CONCUR		3/11
PISTORIA, PAUL			INCREASE & CREATE FILING FEES IN CIVIL CASES TO FUND DIST. COURT OPERATIONS			
HB0267	2/03	3/04		CONCUR AS AMENDED		3/4
MERCER, JOHN			DUTY OF MENTAL HEALTH PROFESSIONALS TO WARN OF VIOLENT PATIENTS			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 23, 1987

The forty-ninth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. in Room 325 of the state Capitol by chairman Joe Mazurek

ROLL CALL: All members were present with the exception of Senators Beck and Crippen, who were excused.

CONSIDERATION OF HOUSE BILL 353: Representative Budd Gould, House District 61, Missoula, introduced HB 353. The bill includes dentists in the doctor-patient privilege provisions so that a dentist could not be examined in court in a civil action, without the patient's consent, as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. He stated the bill came about because of a Missoula case that just assumed dentists were under this privilege, but found they were not in the statute, so this clarifies they are under this.

PROPOSERS: Roger Tippy, Montana Dental Association, testified that the statutory context is the rules of privilege for various professions do not exist in common, but exist in statute. He said the dentists always felt they were defined in the word physician, but the judge in Missoula wanted it clearly stated they were underneath this statute. He said there were other states with a lot of medical practitioners, like Minnesota, who have added this to their statutes.

OPPOSERS: There were no opponents.

QUESTIONS BY THE COMMITTEE: None.

Representative Gould closed the hearing on HB 353.

CONSIDERATION OF HOUSE BILL 309: Representative Joe Quilici, District 71, Butte, introduced the bill, which is by request of the Department of Labor and Industry

tissue transplant. He felt there is no reason bones, organs, and tissue cannot be treated like blood. He said hospitals treat bone donors just like blood donors.

Bill Leary, Montana Hospital Association, testified for House Bill 367, because along with Senate Bill 6, it will make all donations of organs a "service" to the public instead of "sale" in the state.

Deborah Hanson-Gilbert, Director of Technical and Transplantation Services, supported the bill. (Exhibit 3) She also distributed written testimony from John Salisbury, Medical Director of the Montana Eye Bank. (Exhibit 4)

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: There were none.

Representative Ron Miller closed the hearing on HB 367.

CONSIDERATION OF HOUSE BILL 207: Representative Kelly Addy, House District 94, Billings, introduced the bill, which regulates lawsuits against the state and local government, so a person has to first file a claim with the state, and the claim is either granted or denied by the state when the person wants to sue. He said presently the statute does not state clearly a claim has to be in writing or that a claim in writing will improve your filing of suit. He said on page 1, line 18 through page 2, line 5, it clarifies that settlement should be brought up first before the court, and that is the main reason for the claim in writing.

John Maynard, Tort Claims Administration, testified that one of the frustrations he has is that there is a provision that states claims shall be presented to the Department of Administration, but there is no direction as to what manner the claim should be presented.

Karl Englund, Montana Trial Lawyers, echoed Mr. Maynard's statement about the bill. He pointed out a change in the bill on page 2, line 7. (Exhibit 5) He felt it could be a trap for the unwary in terms of the tolling of the Statute of Limitations. He wanted the tolling of the Statute of Limitations at 120 days because the department will probably answer the claim close to 60 days, but the 120 gives the plaintiff time to evaluate the department's response. He said people do wait for an indefinite

period of time before doing some claims, so it would be appropriate to have a set time limit on when a claim can be filed. He felt to short a time frame would cause mistakes in the area of whether there is a valid claim or not.

OPPONENTS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Rep. Addy what he thought of Mr. Englund's change. Rep. Addy thought it was fine.

Senator Halligan questioned how a plaintiff will know if the department received the claim. Mr. Maynard explained the bill stated upon the department's receipt of the claim, the Statute of Limitations is tolled, so it is the date the office receives it. Karl Englund pointed out the smart thing to do is to send it certified.

Senator Mazurek asked what happens if the department loses a claim and doesn't respond in the 60 days. He wondered if this lack of response would make it an exception from the department. Mr. Maynard answered under the original bill, if the plaintiff did not get a response in 60 days, the claimant knew he no longer would have a claim, but this was amended out, which would make more work for their department. He said the House Judiciary committee thought it was an appropriate burden.

Senator Mazurek asked Rep. Addy if this was really discussed in the House committee. Rep. Addy said no, but he agreed with Mr. Maynard. Senator Mazurek said it is stricken from the bill and he asked Rep. Addy if the committee should look at this. Rep. Addy felt it should be looked at. Karl Englund felt it was not the intention of the department or the bill, that after 60 days the claim was deemed accepted, but if the committee does that, the department still goes about the process of not responding. He believes the department should respond so they won't be racing off to court.

Senator Pinsoneault asked if it would be prudent to put in words to the effect that the period can be extended by mutual agreement between the state and the claimant. Rep. Addy said he liked an absolute cut-off, at which time people will know when they are going to court. Karl Englund believed it was applied in the bill already that one would agree to give additional time and put it in writing.

Senator Mazurek asked if there was a provision that you had to make demand upon the governmental entity, which the court threw out because you can't make a tort claimant come against one entity and not against another. Rep. Addy replied that Senator Mazurek is talking about the unusually short statute of limitations there was for filing suits against the state. He said what this bill does is state what one must do prior to filing the claim.

Representative Addy closed the hearing on HB 207.

CONSIDERATION OF HOUSE BILL 554: Representative Fritz Daily, House District 69, Butte, introduced the bill, and stated the bill would prevent people like Don and Dan Nicoles from benefiting from their crime in profit, or like the men convicted of murdering Patrick Duffy's parents. He said the Montana Standard in Butte received offers up to \$20,000 for a picture of Patrick Duffy with his parents. He explained any profit or royalty they might receive would be deposited in the Victims of Crime Compensation Account and it can be used by the victim's dependents or the victims themselves or for paying attorney fees. He said on page 3 it requires the Workers' Compensation Division to do this.

PROPOSERS: Marc Racicot, County Attorney Association, testified this is not a frequent occurrence, but it has been applied in Montana in the last two years. He said it will pay for court appointed counsel and then the victim or the dependents of a deceased victim is entitled to recover his actual and unreimbursed damages of all kinds, or \$5,000, whichever is greater. He said the bill makes all provisions mentioned mandatory.

Hiram Shaw, Insurance Compliance Bureau Division of Workmen's Compensation, supported the bill. (Exhibit 6)

OPPOSERS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Halligan asked if the language about a victim should be tighter. He felt it should be a direct family member that should be defined as the victim. He thought if there was a loophole someone might drain the fund. Mr. Racicot said the definition of victim is the same as in 53-91-03, Section 3. Senator Halligan asked if the victim's family gets \$25,000, no matter what. The answer was if the victim is employed at the time and has no benefits, and if the family depends on the victim's income, then the family gets the \$25,000.

Senator Pinsoneault questioned what gives the state the right to take this away from certain people. Mr. Racicot replied that this is like a forfeiture right. Senator Pinsoneault asked if on page 1, lines 19 and 20 should be broadened. Rep. Daily felt that section could be broadened.

Senator Mazurek asked if the bill is asking for reimbursement to the county or to the public defender. Mr. Racicot said it is reimbursement to the county first. Senator Mazurek asked why the bill has the \$5,000 figure. Mr. Racicot said it was an arbitrary number. He said the bill follows a similar statute in Illinois.

Representative Fritz closed the hearing on HB 554.

EXECUTIVE ACTION:

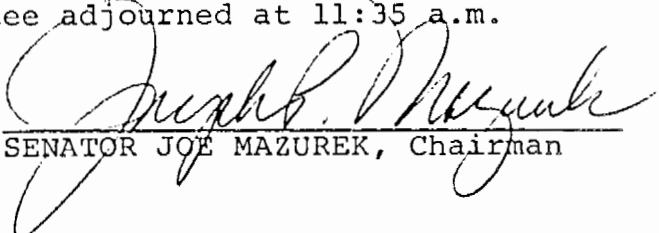
ACTION ON HOUSE BILL 367: Senator Halligan moved House Bill 367 BE CONCURRED IN. The motion CARRIED.

ACTION ON HOUSE BILL 554: Senator Mazurek thought the language in House Bill 554 should be more clear on the type of information the criminal cannot have, and the bill should make sure the counties are the first group to be reimbursed. Valencia Lane said she would look at that language. No action taken.

ACTION ON HOUSE BILL 207: Senator Mazurek felt the 60 day statute of limitations should not be deemed a denial, but an acceptance, if there is no response. Senator Mazurek felt 60 days for an investigation was too short. Senator Blaylock asked if 120 days for an investigation is more reasonable. Senator Mazurek liked 90 days. Senator Halligan said it should be 90 days from when the person mailed the notice. Senator Pinsoneault agreed with the 120 day notice and asked to put it into the amendments Ms. Lane would prepare for the next executive action.

ACTION ON HOUSE BILL 353: Senator Brown moved the bill BE CONCURRED IN. The motion CARRIED.

ADJOURNMENT: The committee adjourned at 11:35 a.m.


SENATOR JOE MAZUREK, Chairman

SUMMARY OF HB207 (ADDY)

(Prepared by Senate Judiciary Committee staff)

HB207 amends the laws relating to the Tort Claims Act, which regulates lawsuits against the state and local governments. The bill provides that no one can sue the state in court until that person has first filed a claim with the state and the claim has been either granted or denied by the state (Department of Administration). Under the bill, the department has 60 days to act on the claim and the statute of limitation on the claim is tolled for 60 days.

COMMENTS: None.

C:\LANE\WP\SUMHB207.

PROPOSED AMENDMENT TO HOUSE BILL 207 - THIRD READING COPY

Page 2, Line 7

Following: "for"

Strike: "60 days or until the department denies
the claim, whichever is less"

Insert: "120 days"

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 3-23-87

BILL NO. H.B. 207

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 26

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>			X
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 26, 1987

The fifty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 26, 1987 by Vice Chairman Bruce Crippen in Room 325 of the Capitol Building.

ROLL CALL: All members were present, except Senator Mazurek, who was presenting another bill in another committee.

CONSIDERATION OF HB 737: Representative Dave Brown, House District #71, introduced HB 737, which allows a professional person at Montana State Hospital to file a petition to extend a patient's stay at the hospital either six months or one year. He said presently the law is silent as to which county has jurisdiction, however, the practice is to have it in Deer Lodge County. He stated the bill makes the current practice the law. He said there is no effect on the hospital or their budget because, presently, this is the way they have been handling this problem. He said one concern is it might cost additional money if there is no change in the law for travel and expenses of the state officials from Montana State Hospital to the counties' jurisdictions.

PROPOSERS: Curt Chisholm, Department of Institutions, testified the bill was introduced at the department's request. He said monthly they recommit between 6 and 12 patients. He said Judge Boyd holds court on the campus of Montana State Hospital because he prefers to do it that way. Mr. Chisholm said the hospital recognizes that his court has venue over these patients when it becomes necessary to recommit them for additional time besides the 90 days commitment period rendered by the court of jurisdiction. He said this bill will clarify that Deer Lodge County has jurisdiction over these patients.

Steve Waldron, Mental Health Centers, stated that it doesn't make sense to require that a professional person from the State Hospital has to testify on a case out of the county's jurisdiction because it takes up additional staff time.

OPPOSERS: None

DISCUSSION ON HB 737: Senator Crippen asked if the court records from other counties have to be transferred to the court in Deer Lodge. Mr. Chisholm answered that the committing court always sends the court order and all the supporting testimony to Deer Lodge.

Representative Brown closed.

Judiciary Committee
Minutes of the meeting
March 26, 1987
page 10

ACTION ON HB 761: A straw vote indicated the committee would not pass the bill. Senator Beck wanted to keep it alive for the sake of the small counties. No action was taken.

ACTION ON HB 503: Valencia Lane asked if the committee would like to amend the last sentence of the bill, so it will include touring or viewing of historical sites as suggested by the sponsor. Senator Blaylock asked what the difference was between "touring" and "viewing". Valencia said "touring" implies "passing through an area" while "viewing" is just looking. Senator Blaylock moved Dorthy Bradley's amendment:

Page 1, line 16.

Following: "hiking,"

Insert: "touring or viewing cultural and historical sites and monuments,"

He also moved:

2. Page 1, lines 17 and 18.

Following: "expeditions." on line 17.

Strike: remainder of line 17 through line 18

The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 748: Senator Mazurek explained the Ramirez's amendments to the committee (see Exhibit 6). Senator Mazurek asked what Title 35, chapter 15 applies to. Valencia said it applies to cooperative associations. He said the bill only applies to the liability of the officers or directors to the corporation or the shareholders. He said the bill has nothing to do with third parties. Senator Pinsoneault said on page 3 there were exceptions that obligate corporations to stay within guidelines. Senator Halligan asked if these amendments were presented in the House at all. Senator Mazurek said Representative Bardanouve asked in the House why the bill only applies to private organizations and he wanted to know why the bill would not apply to REA and others like REA. Senator Mazurek said the amendments make the same provisions applicable to other corporations. Senator Halligan moved the amendments. The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried.

ACTION ON HB 207: Valencia handed out amendments to the committee that they had asked her to prepare (see Exhibit 7). Senator Halligan moved the amendments. The motion carried. Senator Pinsoneault moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 309: Valencia explained the amendments requested by the committee (see Exhibit 8). She said the third amendment is language from the Workmen's Comp. Act, which protects the privacy of people's

Proposed Amendments to HB 207
Third reading copy (blue)

1. Page 2, line 4.

Strike: "60"

Insert: "120"

2. Page 2, line 5.

Following: "DEPARTMENT."

Insert: "The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection."

3. Page 2, lines 7 and 8.

Following: "FOR" on line 7

Strike: the remainder of line 7 through "LESS" on line 8

Insert: "120 days"

STANDING COMMITTEE REPORT

SENATE

March 26

87

19.....

MR. PRESIDENT

We, your committee on.....SENATE JUDICIARY.....

having had under consideration.....HOUSE BILL.....No. 207

Third blue
reading copy ()
color

Disposition of state tort claims by agency prerequisite to court action.
Addy (Pinsonneault)

HOUSE BILL 207

Respectfully report as follows: That.....No.....

be amended as follows:

1. Page 2, line 4.

Strike: "60"

Insert: "120"

2. Page 2, line 5.

Following: "DEPARTMENT."

Insert: "The failure of the department to make final disposition of a claim within 120 days after it is presented to the department must be considered a final denial of the claim for purposes of this subsection."

3. Page 2, lines 7 and 8.

Following: "FOR" on line 7

Strike: the remainder of line 7 through "LESS" on line 8

Insert: "120 days"

AND AS AMENDED
BE CONCURRED IN

Senator Mazurek

Chairman.

3-26-87
H. 15
20

HOUSE BILL NO. 207

INTRODUCED BY ADDY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT DISPOSITION BY THE DEPARTMENT OF ADMINISTRATION OF TORT CLAIMS AGAINST THE STATE IS A PREREQUISITE TO FILING AN ACTION AGAINST THE STATE IN DISTRICT COURT; AMENDING SECTION 2-9-301, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-301, MCA, is amended to read:

"2-9-301. Filing of claims against state and political subdivisions -- disposition by state agency as prerequisite.

(1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter ~~shall~~ must be presented in writing to ~~and filed with~~ the department of administration.

(2) A complaint based on a claim subject to the provisions of subsection (1) may not be filed in district court unless the claimant has first presented the claim to the department of administration and the department has finally denied the claim. The department's denial of a claim must be in writing and must be sent by certified mail. The failure of the department to make final disposition of a claim within 60 days after it is presented to the department

~~must, at the option of the claimant at any time thereafter, be considered a final denial of the claim for purposes of this subsection~~ DEPARTMENT MUST GRANT OR DENY THE CLAIM IN WRITING SENT BY CERTIFIED MAIL WITHIN 60 120 DAYS AFTER THE CLAIM IS PRESENTED TO THE DEPARTMENT. THE FAILURE OF THE DEPARTMENT TO MAKE FINAL DISPOSITION OF A CLAIM WITHIN 120 DAYS AFTER IT IS PRESENTED TO THE DEPARTMENT MUST BE CONSIDERED A FINAL DENIAL OF THE CLAIM FOR PURPOSES OF THIS SUBSECTION. UPON THE DEPARTMENT'S RECEIPT OF THE CLAIM, THE STATUTE OF LIMITATIONS ON THE CLAIM IS TOLLED FOR 60-DAYS-OR UNTIL-THE-DEPARTMENT-DENIES-THE-CLAIM,WHICHEVER-IS-BESS 120 DAYS. The provisions of this subsection do not apply to claims that may be asserted under Title 25, chapter 20, by third-party complaint, cross-claim, or counterclaim.

~~{2}~~(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Applicability. This act applies to causes of action filed in district court after the effective date of this act.

-End-

-2-

HB 207

REFERENCE BILL